

entrance in Icy Strait and at Point Adolphus as part of the action area they evaluated, and that the large whale concentration at Point Adolphus, a popular whale watching location for vessels entering and exiting NPS waters, is not protected by vessel speed limits NOAA Fisheries made the following recommendation: The NPS should work with NOAA Fisheries, the U.S. Coast Guard and the State of Alaska to implement vessel speed limits, or exclusion zones in the nearshore waters of Icy Strait (i.e., within 1 mile of Point Adolphus) adjacent to park waters that contain known concentrations of whales, or establish agreements with cruise ship and tour vessel concessioners whereby vessel speed and course restrictions are adopted beyond the NPS boundaries in these areas where whales are known to forage and occur in large numbers.

4. And finally, NOAA Fisheries concluded that the proposed increases in vessel traffic are occurring in an area where disturbance and collision risk are already a concern, and in the absence of a quantitative determination of Endangered Species Act and the Marine Mammal Protection Act of 1972 take levels. It is NOAA Fisheries recommendation, therefore, that the Park Service should monitor and evaluate its vessel operating requirements to determine if they are effective at protecting whales in these nearshore waters. Two essential elements of this recommendation are measurements of compliance and effectiveness of regulations.

### 1.3 LEGAL MANDATES, POLICIES, AND PLANS

The following subsections summarize the most important directives that guide development of this plan.

#### 1.3.1 NPS Organic Act and Redwood Amendment

The Organic Act of 1916 and the 1978 amendment of the NPS General Authorities Act of 1970 provide the overall mandate for management of the national parks. The Organic Act specifies the core NPS mission, including establishing regulations to protect the environment. The act states the responsibilities of the Park Service:

*The (National Park) service . . . shall promote and regulate the use of the Federal areas known as national parks . . . to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

The Organic Act gives the Park Service a mandate to protect resources of national parks and to make conservation of the environment the leading priority when making management decisions regarding national parks. The act also states that one of the fundamental purposes of all parks includes the enjoyment of park resources and values. In situations where a conflict exists between Park Service efforts to conserve resources and values versus those providing for enjoyment of them, conservation takes precedence.

**Supplements to the Organic Act of 1916.** Congress supplemented provisions of the Organic Act by the General Authorities Act in 1970, and through enactment of a 1978 amendment to that law, the Redwood Amendment. Congress strengthened the ability of the U.S. Secretary of the Interior to protect park resources. The Redwood Amendment states:

*Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted on page 1], to the common benefit of all the people of the United*

*States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.*

Section 1.4 of the Park Service's *2001 Management Policies* (NPS 2001b), described further in subsection 1.3.3, formally adopts a single interpretation of the key statutory provisions under the Redwood amendment. This interpretation limits ambiguity to ensure consistency in decision making to show the courts that decisions made by the Park Service are logical and reasonable, and thoroughly thought through in accordance with the Organic Act. Section 1.4 of the NPS management policies states that the no-impairment term of the Organic Act and the no-derogation term of the Redwood amendment define a single standard for management of the National Park System, and the terms can be used interchangeably (NPS 2001b).

### **1.3.2 Protection of Park Resources and Values**

The NPS Organic Act and the General Authorities Act prohibit impairment of park resources and values. The NPS management policies use the terms "resources" and "values" to mean the full spectrum of tangible and intangible attributes for which the park is established and are managed, including the Organic Act's fundamental purpose and any additional purposes as stated in the park's establishing legislation. The impairment of park resources and values may not be allowed unless directly and specifically provided by statute. The primary responsibility of the National Park Service is to ensure that park resources and values will continue to exist in a condition that will allow U.S. citizens to have present and future opportunities for enjoyment of them.

The evaluation of whether impacts of a proposed action would lead to impairment of park resources and values is included in this environmental impact statement. Impairment is more likely when there are potential impacts to a resource or value whose conservation:

- is necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park.
- is key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park.
- is identified as a goal in the park's general management plan (NPS 1984) or other relevant NPS planning documents.

This environmental impact statement includes an evaluation of the potential for each alternative to result in impairment. The Park Service will base its final decision regarding the proposed action's potential to impair park resources on this evaluation.

An impairment evaluation is presented in "Chapter 4. Environmental Consequences" for each topic contained within the physical and biological environment sections and for two topics within the human environment section — wilderness resources and cultural resources.

### **1.3.3 Pertinent NPS Director's Orders**

Director's orders are part of the NPS directives system, as are NPS management policies. Director's orders provide legal references, operating policies, standards, and procedures for particular aspects of

park planning. Director's Order 12 (NPS 2001a) is most relevant because it provides the guidance necessary to prepare an NPS EIS in compliance with NEPA.

Two other director's orders are particularly pertinent to vessel management in Glacier and Dundas Bays. "Director's Order 47, Sound Preservation and Noise Management" (NPS 2001c) is important because it provides guidance for regulating noise in the park. This director's order articulates NPS policies that require, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape resource in a condition unimpaired by inappropriate or excessive noise sources. "Director's Order 41, Wilderness Preservation and Management" (NPS 1999a) provides accountability, consistency, and continuity to the Park Service's wilderness management program, and otherwise guides service-wide efforts in meeting the letter and spirit of the 1964 Wilderness Act. This director's order clarifies, where necessary, specific provisions of the Park Service's management policies (NPS 2001b), and establishes specific instructions and requirements concerning the management of all NPS wilderness areas.

### 1.3.4 Glacier Bay National Park and Preserve Enabling Legislation

Glacier Bay was designated as a national monument by presidential proclamation in 1925. The presidential proclamations of 1925 and 1939 established and expanded Glacier Bay National Monument; the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 redesignated the monument as a park and preserve and further expanded it; the NPS Organic Act of 1916, and amendments applicable to all national park areas, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277), as amended, provide specific statutory requirements for management of the park and preserve. These mandates include:

- "conserv[ing] the scenery and the natural and historic objects and wildlife therein and . . . provid[ing] for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (NPS Organic Act).
- preserving and protecting the area's tidewater glaciers, vegetation, unique opportunities for scientific study of glaciers and related flora and fauna changes over time, and historic value associated with early explorers and scientists (proclamation).
- preserving lands and waters containing nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values (Alaska National Interest Lands Conservation Act).
- preserving the unrivaled scenic and geological values associated with natural landscapes (Alaska National Interest Lands Conservation Act).
- maintaining sound populations of, and habitat for, wildlife species of inestimable value to the citizens (Alaska National Interest Lands Conservation Act).
- preserving the natural, unaltered state of the coastal rain forest ecosystem (Alaska National Interest Lands Conservation Act).
- preserving wilderness resources and related recreational opportunities (Alaska National Interest Lands Conservation Act).
- maintaining opportunities for scientific research and undisturbed ecosystems (Alaska National Interest Lands Conservation Act).
- allowing the park to remain "[a] large sanctuary where fish and wildlife may roam free, developing their social structure and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause" (Alaska National Interest Lands Conservation Act).

### **1.3.5 Park Purposes**

Based on the enabling legislation presented in subsection 1.3.4, the purpose of the park is to preserve its accessible tidewater glaciers, superlative scenic grandeur, historic value, unique opportunities for the study of glaciers and associated plant and animal community succession processes, fish and wildlife populations and their habitats, unaltered and undisturbed ecosystems and opportunities for scientific research, and wilderness resource values and related recreational opportunities (NPS 2000a).

### **1.3.6 International Biosphere Reserve and World Heritage Site Designations**

In 1986, the park and preserve was designated as an International Biosphere Reserve by the United Nations Educational, Scientific, and Cultural Organization under its Man and the Biosphere Program. Biosphere reserves are protected areas that are internationally recognized. They are established to conserve species and natural communities and to discover ways to use environments without degrading them. The program emphasizes research, resource monitoring, and education.

In December 1992, the United Nations Educational, Scientific, and Cultural Organization also designated the park as a World Heritage Site, a natural site of outstanding universal value to mankind. World Heritage Site designation recognizes the world's most significant natural and cultural areas. The park and preserve is a part of the Kluane/Wrangell-St. Elias/Glacier Bay/Tatshenshini-Alsek World Heritage Site.

### **1.3.7 Park Management**

Title 36 CFR 13.65 (see appendix A) and the *Glacier Bay National Park and Preserve 2003 Compendium* (NPS 2003; see appendix B) stipulate park rules and regulations, including current vessel quotas and operating requirements (as amended by the U.S. Congress). The park compendium outlines many NPS regulations that provide the superintendent with discretionary authority to make designations or impose public use restrictions or conditions. The regulations in 36 CFR 13.65 and the park compendium encompass all aspects of park management. The compendium is reviewed and revised annually.

### **1.3.8 Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277, 1998)**

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, passed in October 1998 and amended in May 1999, specifically addressed commercial fishing activities in the marine waters of the park. This legislation restated closure of wilderness waters to commercial fishing, closed additional non-wilderness areas within Glacier Bay to commercial fishing, and required a phase-out (in progress) of all commercial fishing within Glacier Bay. The law allows existing commercial fisheries to continue in the marine waters of the park outside Glacier Bay under a cooperative NPS / State of Alaska fisheries management plan consistent with park purposes and values.

### **1.3.9 Pertinent Park Plans and Their Relationship to This Plan**

**General Management Plan.** The park and preserve's *General Management Plan* (NPS 1984) sets the overall direction for management of natural and cultural resources, visitor use, land protection,

and facility development. The following general management plan objectives pertain to vessel quotas and operating requirements:

1. *Protection of park resources:* Allow ecological processes to continue unimpaired by visitor use. Protect marine and terrestrial wildlife and vegetation from adverse effects of visitor use. Identify marine areas that have special sensitivities for wildlife, solitude, or other values, and develop methods for protecting these special sensitivities.
2. *Provision for visitor use:* Continue recognition of Glacier Bay's waterways as primary access corridors to the area. Ensure visitors have a wide variety of quality and environmentally sound alternatives for experiencing the Glacier Bay story, employing a wide variety of vessel types. Establish vessel operating requirements and limits on the number of vessel entries necessary to protect park purposes and resources.

**Wilderness Visitor Use Management Plan.** In July 1989, the park adopted the *Wilderness Visitor Use Management Plan* (NPS 1989). The plan establishes wilderness visitor management zones and requirements for access, group size, length of use, and commercial activities. Recreational use associated with vessel traffic, such as tour vessel drop-off points for wilderness visitors, or numbers of commercial sea kayaking trips, is addressed in the plan. This plan was considered in the development of this environmental impact statement.

**Backcountry Management Plan and Environmental Impact Statement.** The National Park Service is amending the park general management plan with a backcountry management plan and accompanying EIS. A Notice of Intent to prepare an EIS was published in the *Federal Register* in September 2002. The Plan is to provide comprehensive management direction for the next 15 to 20 years for the backcountry of Glacier Bay National Park and Preserve. Specific topics to be addressed in the backcountry plan include, but are not limited to: backcountry hiking, mountaineering, aviation, non-motorized boating (such as kayaking), commercial services, administrative and research activities, and the various facilities related to these activities.

**Commercial Fishing Compensation Program.** Commercial fishing is being phased out of Glacier Bay, but will continue until all the current permit holders cease to fish.

### 1.3.10 Environmental Regulatory Requirements

In addition to NPS mandates, policies, and plans, the Park Service also must evaluate its proposed action against several federal laws intended to protect the environment. These laws are described in "Chapter 4. Environmental Consequences."

## 1.4 THE NEPA PROCESS

### 1.4.1 Scoping

NEPA is the basic national charter for protection of the environment. NEPA procedures ensure that relevant environmental information is available to government officials and the public before decisions are made and before actions are taken. To achieve these objectives, the NEPA process for "major federal actions" includes scoping, preparation of draft and final environmental impact statements, and development of a record of decision. These elements of the NEPA process for the Glacier Bay proposed action are described in detail below.

The Council on Environmental Quality defines scoping as "an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to the proposed action" (40 CFR 1501.7). The intent of scoping is to avoid overlooking important issues that should be analyzed and to de-emphasize less important issues. Comments from any interested